

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 07-35 (1) (RHK/AJB)

Plaintiff/Appellant,

ORDER

vs.

Carl Lee Richardson,

Defendant/Petitioner.

In his Section 2255 Motion now before the Court, Defendant asserts six claims for relief. Of these six claims, four¹ were raised and rejected by the Eighth Circuit in his direct appeal. See United States v. Richardson, 357 F.3d 951 (8th Cir. 2008), and cannot now be re-litigated in his Motion to Vacate pursuant to 28 U.S.C. § 2255. See United States v. Shabazz, 657 F.2 189 (8th Cir. 1981); Dall v. United States, 957 F.2d 571 (8th Cir. 1992); United States v. Kraemer, 810 F.2d 173 (8th Cir. 1987).

The only two issues now raised, which were not presented to the Eighth Circuit, require no evidentiary hearing.

First, Defendant argues that the requirement of an interstate commerce element was proved through use of inadmissible hearsay testimony of a special agent of the Bureau of Alcohol, Firearms and Explosives. The witness's background, experience and

1. The four claims are: (a) the introduction of DNA testing through a BCA forensic chemist; (b) holding the trial on the same day the Court dismissed the original indictment without prejudice and the Government re-indicted the Defendant on the identical charges; (c) holding the trial in Duluth, Minnesota, and securing a jury pool from that area of the District rather than in St. Paul, Minnesota, where the crime transpired; and (d) he was seized in violation of the Fourth

specialized training qualified her to opine on where the subject firearm was manufactured—Springfield, Massachusetts. She was not cross-examined by defense counsel. The argument is without merit.

Finally, Defendant asserts that his counsel provided ineffective assistance at trial by not objecting to the testimony of the witness regarding the origin of the firearm and by acting “very clumsily while cross-examining” a witness. This argument is also without merit.

Accordingly, and upon all the files, records and proceedings herein, **IT IS ORDERED** that the Section 2255 Motion (Doc. No. 38) is **DENIED** and the Court declines to issue a Certificate of Appealability.

Dated: May 27, 2010

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge